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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 GOOGLE LLC,

13 Plaintiff,

14 vs.

15 SONOS, INC.,

16 Defendant.

CASE NO. 3:20-cv-06754-WHA

**GOOGLE'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
PORTIONS OF ITS SECOND AMENDED
COMPLAINT**

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Plaintiff Google LLC (“Google”) hereby requests to file under seal portions of its Second Amended Complaint (“SAC”). Specifically, Google requests an order granting leave to file under seal the portions of the documents listed below:

Document	Portions to Be Filed Under Seal	Designating Party
Google’s SAC	Portions highlighted in yellow	Google
SAC Exhibit 2	Entire Document	Google
SAC Exhibit 3	Entire Document	Google
SAC Exhibit 4	Entire Document	Google
SAC Exhibit 5	Entire Document	Google
SAC Exhibit 6	Entire Document	Google

II. LEGAL STANDARD

Civil Local Rule 79-5(c) provides that a party seeking to file its own documents under seal must file an administrative motion that articulates the applicable legal standard and reasons for keeping a document under seal, includes evidentiary support from a declaration where necessary, and provides a proposed order that is narrowly tailored to seal only the sealable material.

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mutual Auto. Insurance Company*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

The Ninth Circuit has recognized that two different standards may apply to a request to seal a document – namely the “compelling reasons” standard or the “good cause” standard. *Blessing v. Plex Sys., Inc.*, No. 21-CV-05951-PJH, 2021 WL 6064006, at *12 (N.D. Cal. Dec. 22, 2021) (citing

1 *Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016)). The
 2 compelling reasons standard applies to any sealing request made in connection with a motion that
 3 is “more than tangentially related to the merits of a case.” *Id.* Accordingly, courts in this district
 4 “have held that the compelling reasons standard applies to the sealing of a complaint precisely
 5 because the complaint forms the foundation of the lawsuit.” *In re Google Location Hist. Litig.*, 514
 6 F. Supp. 3d 1147, 1161-62 (N.D. Cal. 2021) (collecting cases).

7 Under the compelling reasons standard, “a court may seal a record only if it finds a
 8 ‘compelling reason’ to support such treatment.” *Blessing*, 2021 WL 6064006, at *12. “Confidential
 9 business information in the form of ‘license agreements, financial terms, details of confidential
 10 licensing negotiations, and business strategies’ satisfies the ‘compelling reasons’ standard.”
 11 *Hetland v. LendingTree, LLC*, No. 19-CV-02288-JSC, 2021 WL 2313386, at *1 (N.D. Cal. May 3,
 12 2021) (quoting *Exeltis USA Inc. v. First Databank, Inc.*, Case No. 17-cv-04810-HSG, 2020 WL
 13 2838812, at *1 (N.D. Cal. June 1, 2020)).

14 **III. THE COURT SHOULD SEAL GOOGLE’S CONFIDENTIAL INFORMATION**

15 The highlighted portions of Google’s SAC as well as Exhibits 2 through 6 contain
 16 confidential business information that could significantly harm Google’s competitive standing if
 17 disclosed. The highlighted portions of Google’s SAC, Exhibit 2, and Exhibit 3 include terms to
 18 confidential agreements that are not public. The public disclosure of this information would harm
 19 Google’s competitive standing and its ability to negotiate future agreements by giving competitors
 20 access to Google’s highly confidential business thinking and asymmetrical information about
 21 Google’s collaboration strategies to other entities. Cooper Decl. ¶ 3. A less restrictive alternative
 22 than sealing the highlighted portions of Google’s SAC would not be sufficient because the
 23 information sought to be sealed is Google’s proprietary and confidential business information but is
 24 integral to the claims in Google’s SAC. *Id.*

25 Exhibits 4, 5, and 6 contain confidential information regarding highly sensitive features of
 26 Google’s products. Specifically, these exhibits detail the operation and system design of Google
 27 products. Public disclosure of these exhibits would harm the competitive standing Google has
 28 earned through years of innovation and careful deliberation by revealing sensitive aspects of

1 Google's proprietary systems, strategies, designs, and practices to Google's competitors. Cooper
 2 Decl. ¶ 4.

3 Material that could harm a litigant's competitive standing may be sealed under the
 4 compelling reasons standard. *In re Qualcomm Litig.*, No. 3:17-CV-0108-GPC-MDD, 2017 WL
 5 5176922, at *2 (S.D. Cal. Nov. 8, 2017) (concluding that "compelling reasons exist to seal . . .
 6 information subject to confidentiality and non-disclosure provisions" because "[s]uch insight could
 7 harm the parties in future negotiations with existing customers, third-parties, and other entities with
 8 whom they do business"); *Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, No. 12-cv-
 9 03844-JST2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information "is appropriately sealable
 10 under the 'compelling reasons' standard where that information could be used to the company's
 11 competitive disadvantage"). Thus, "[c]ourts regularly find that litigants may file under seal
 12 contracts with third parties that contain proprietary and confidential business information." *Finisar*
 13 *Corp. v. Nistica, Inc.*, No. 13-CV-03345-BLF(JSC), 2015 WL 3988132, at *5 (N.D. Cal. June 30,
 14 2015); *see also In re Qualcomm Litig.*, 2017 WL 5176922, at *2 (finding that "compelling reasons
 15 exist to seal the unredacted portions of the pleadings and briefing that concern licensing terms,
 16 royalties paid or owed under license agreements, financial terms, details of confidential licensing
 17 negotiations, and business strategies, along with those exhibits that contain the various confidential
 18 business agreements executed among the parties"); *In re Elec. Arts, Inc.*, 298 F. App'x 568, 570
 19 (9th Cir. 2008) (directing district court to seal licensing agreement). They also routinely seal
 20 materials that detail product architecture. *See Delphix Corp. v. Actifo, Inc.*, No. 13-cv-04613-BLF,
 21 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014) (finding compelling reasons to seal where court
 22 filings contained "highly sensitive information regarding [an entity's confidential] product
 23 architecture and development"); *Guzik Tech. Enterprises, Inc. v. W. Digital Corp.*, No. 5:11-CV-
 24 03786-PSG, 2013 WL 6199629, at *4 (N.D. Cal. Nov. 27, 2013) (sealing exhibit containing
 25 "significant references to and discussion regarding the technical features" of a litigant's products).
 26 Since disclosure of the above-listed information would irreparably harm Google's competitive
 27 standing, the Court should grant Google's Administrative Motion.

28 IV. CONCLUSION

1 For the foregoing reasons, Google respectfully requests that the Court grant Google's
2 Administrative Motion to File Portions of its Second Amended Complaint Under Seal.

3
4 DATED: February 4, 2022

QUINN EMANUEL URQUHART & SULLIVAN,
LLP

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Attorneys for GOOGLE LLC

ATTESTATION

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that, on February 4, 2022, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system and email.

DATED: February 4, 2022

By: /s/ Charles K. Verhoeven
Charles K. Verhoeven